

REMARKS

The Office Action of October 27, 2010 has been reviewed and the Examiner's comments carefully considered. Claims 20-34, 39, 40 and 44-51 are pending in this application. Claims 20-34 and 39 have been withdrawn in response to the Restriction Requirement of June 16, 2009. Independent method claim 40 has been amended to include the step of providing a heat-sealable film having a tear lip and a weakening line and to indicate that the heat-sealable film above the powder is permanently joined to the inside wall of the container. New claim 52 has been added. Support for the amendment of claim 40 and the addition of claim 52 may be found at page 8, lines 20-24 of the original application. No new matter has been added.

Claims 40, 44, 45 and 48-51 stand rejected under 35 U.S.C. §103(a) as being obvious over French Patent No. FR 2747107 to Bois (hereinafter "Bois") in view of United States Patent No. 6,058,682 to Pajak et al. (hereinafter "Pajak"). It is asserted in the Office Action that Bois teaches a packaging filled with powder that meets all of the limitations of independent claims 40 and 51, except sealing the heat-sealable film to the inside of the wall of the container. The missing limitation is asserted to be taught by Pajak. Applicants respectfully disagree.

Amended independent claim 40 recites, *inter alia*, that the heat-sealable film above the powder has a tear lip and a weakening line and is permanently joined to the inside wall of the container. The combination of Bois and Pajak fails to disclose at least these limitations of claim 40.

First, Bois and Pajak, taken alone or in combination, fail to teach permanently joining the film to the inside wall of the container. As stated by the Examiner on page 3 of the Office Action, Bois does not teach joining the film to the inside wall of the container and, therefore, more specifically, does not teach permanently joining the film to the inside wall of the container. And, in Pajak, the film (34a) is non-permanently sealed to the inner wall (80) so that it can be easily removed from the wall by the consumer without tearing the container (col. 3, lines 8-11, lines 46 and 47, and lines 61 and 62). On the other hand, the claimed permanent joining of the film to the inner wall of the container remains intact even when the container is opened. Thus, Pajak not only fails to teach permanently joining the film to the inside wall of the container, but specifically teaches against such permanent joining.

Second, even ignoring the fact that Pajak teaches away from permanently joining the film to the inside wall of the container, a person skilled in the art would not be motivated to combine the prior art in the way suggested by the Examiner. The Examiner asserts that since both references teach ways to make room for the spoon between the lid and the film cover, it would be obvious to substitute the method of Pajak for the method of Bois. The Applicants respectfully disagree. The cover (7) of Bois is crimped to the sidewall (4) of the container. The crimped connection to the upper edge of the can is utilized to provide mechanical strength to the connection of the cover (7) to the can, e.g., during use of the ring pull. If the cover of Bois were attached to the inner wall using the nonpermanent seal taught by Pajak, the necessary connection strength would not be present. On the other hand, the presently claimed permanent joining of the film to the inner wall allows a straight (horizontal) film at a distance below the upper edge of the container to be used thereby making space for a scoop without the inconveniences of the recessed arrangement of Fig. 6 of Bois. Such an arrangement is neither taught nor suggested by Bois or Pajak, alone or in combination.

Third, there is no reason to provide the claimed weakening line in the film of Pajak because, as described above, the intended mode removal of the film is by separation of the weld between the film and inner wall of the container.

Since Bois and Pajak, either alone or in combination, do not teach or suggest all of the limitations of independent claim 40, they do not render the claim obvious. Claims 44, 45 and 48-50, which depend from claim 40 and further define the invention, are also not rendered obvious by Bois and Pajak for at least the same reasons.

Amended independent claim 51 recites, *inter alia*, that the heat-sealable film above the powder is permanently joined to the inside wall of the container which is comprised of a paper/metal foil/plastic laminate. The combination of Bois and Pajak fails to disclose at least these limitations of claim 51.

The limitation that the heat-sealable film above the powder is permanently joined to the inside wall of the container is not taught or suggested by Bois and Pajak for the same reasons that were discussed above with respect to independent claim 40.

In addition, Bois and Pajak, alone or in combination, do not teach that the container wall consists of a paper/metal foil/plastic laminate. Bois does not teach any kind of a laminate wall or any construction of the container wall except that it may be made of metal, carton, or plastic. Pajak also does not teach any specific kind of container but suggests in col. 1, lines 21-24 that the cup may be made of cardboard. Cardboard is not a paper/metal foil/plastic laminate. Thus, neither of the references, even if combined, teaches a container made of a paper/metal foil/plastic laminate.

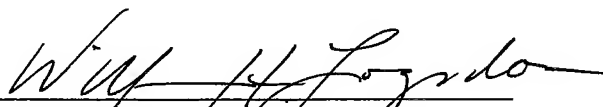
Therefore, since Bois and Pajak, either alone or in combination, do not teach or suggest all of the limitations of independent claim 51 as detailed above, they do not render the claim obvious.

Claims 46 and 47 stand rejected under 35 U.S.C. §103(a) as being obvious over Bois and Pajak as applied to claim 40 in further view of United States Patent No. 3,556,174 to Gible et al. (hereinafter "Gible"). Bois and Pajak are applied to independent claim 40 as above and Gible is asserted to teach the additional limitations of claims 46 and 47, which depend therefrom. Bois and Pajak fail to teach all of the limitations of independent claim 40 for the reasons stated above and Gible does not remedy the deficiencies of Bois and Pajak. Thus, the combination of Bois, Pajak, and Gible does not render claims 46 and 47, which depend from claim 40, obvious.

Based on the foregoing amendments and remarks, reconsideration of the rejections and allowance of claims 40 and 44-52 are respectfully requested.

Respectfully submitted,

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